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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.4655 OF 2021**

**Yoginder Sharma**,
Age 42 years, Occupation Nil.
Residing at House No.14, Sector – 9,
Panchkula (Chandigarh), Haryana … **Petitioner**

**V/s.**

1. **Director of Revenue Intelligence**,
   UTI Building, 13 Sir Vithaladas
   Thackersey Marg, New Marine
   Lines, Mumbai – 400 020
2. **The State of Maharashtra** … **Respondents**

Mr. A.P. Mundargi, Senior Advocate with Mr. Mandar M. Goswami for the petitioner.

Ms. Ruju Thakker for respondent no.1.

Mr. R.M. Pethe, APP for respondent no.2/State.

**CORAM : AMIT BORKAR, J.**

**RESERVED ON : NOVEMBER 11, 2022**

**PRONOUNCED ON : DECEMBER 23, 2022**

**JUDGMENT:**

**1.** **Rule**. Rule is made returnable forthwith.

**2.** This petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order passed by the learned Special Judge (NDPS), Thane on 12th November 2021 on an application below Exhibit 130 in NDPS Special Case No.48 of 2017, whereby the prayer of the petitioner to discharge him from the prosecution came to be rejected. The petitioner is also challenging order dated 12th July 2019 framing charges against the petitioner.

**3.** The background facts necessary for determination of this writ petition can be stated as under.

On 20th April 2017 the petitioner was arrested in relation to recovery of 16,72,238 quantity of tablets of psychotropic substances, Schedule-H drugs which were valued at Rs.63,90,975/-. According to the prosecution, the petitioner was assisting and aiding prime accused one Mr. Manjeet Singh Chilotra of Mumbai through one of his firms, viz., M/s. Computer Cops., having its registered office at House No.2286, Sector-45C, Chandigarh. The petitioner used to book orders for psychotropic substances online from overseas consumers and send it through prime accused, Manjeet Singh Chilotra. The petitioner received payments for the orders of tablets since 2012 through international wire transfer to the account of his company, Computer Cops. The petitioner used to retain 20% (twenty percent) of the amount as is profit and balance amount was sent by him to the different accounts maintained by the prime accused, Manjeet Singh Chilotra with ICICI Bank in the name of Acme Computers, Allied Computers, D.M. Netcom, D.M. Websolutions and Raj Webtech.

During the period from September 2015 to November 2016 the petitioner had sent around Rs.3.19 crore from the account of his firm, M/s. Computer Cops to Manjeet Singh Chilotra's firm Allied Computers. During July 2015 to August 2015 the petitioner sent amount of Rs.79 lakh from account of his firm, Computer Cops to D.M. Netcom's account. During July 2016 to November 2016, the petitioner sent around Rs.37 lakh from account of his firm, Computer Cops to D.M. Websolution and also sent amount of Rs.72 lakh to the account of M/s. Raj Webtech from Computer Cops.

**4.** The respondents registered offence punishable under section 8(c), 22C, 23C, 27A and 29 of the Narcotics Drugs and Psychotropic Substance Act, 1985 (hereafter "NDPS Act", for short). Statements of all accused were recorded under section 67 of the NDPS Act, wherein it is alleged that all the accused admitted their complicity in the alleged offences .

**5.** After completing investigation, the respondents filed charge-sheet before the learned Special Court, Thane being NDPS Special Case No.48 of 2017.

**6.** On 25th July 2019 the petitioner filed an application for discharge under Section 227 of the Criminal Procedure Code, 1973 (hereafter "Code", for short). During the pendency of such discharge application, the Special Court framed charges against the petitioner vide order dated 12th July 2019. The learned Special Judge by order dated 12th November 2021 rejected the application for discharge.

**7.** Being aggrieved, the petitioner has invoked writ jurisdiction of this Court.

**8.** I have heard Mr. Mundargi, learned senior advocate for the petitioner and Ms. Ruju Thakker, learned advocate for respondent no.1. With the assistance of the learned advocates for the parties, I have perused the material on record including relevant material from the report under section 173 of the Code and documents annexed with it.

**9.** Mr. Mundargi, learned senior advocate for the petitioner canvassed two-fold submissions. Firstly, the confessional statement under section 67 of the NDPS Act to prosecute the petitioner for aforesaid offence is inadmissible in evidence as it has no evidentiary value; second, the material on record in the form of bank statements is not sufficient to prima facie establish offence alleged against the petitioner as the entries in the bank statement are made due to business transaction between accused no.1 and the petitioner. He submitted that the confessional statement in the absence of corroboration is no evidence against the petitioner.

**10.** Ms. Ruju Thakker, learned advocate for respondent no.1 laying emphasis on the material on record, especially bank statements of transfer of amount from the accounts of the petitioner to the accounts of the respondent no.1 and CDR record to demonstrate conversation between all the accused and the petitioner, submitted that there is overwhelming material to lend support to frame charges against the petitioner for offence alleged against him. She submitted that at this stage defence of the petitioner is not required to be taken into count at all. She submitted that the very premise of the petitioner that there was business transaction between the accused no.1 and the petitioner were mere props which renders the application for discharge untenable. In the face of serious allegations supported by overwhelming documentary evidence requires a trial. Resultantly, the learned special Judge committed no error in rejecting the application.

**11.** The challenge to the tenability of the writ petition in the context of its frame and prayers therein in the context of aforesaid, especially to the invocation of provisions contained in section 8(c), 22C, 23C, 27A and 29 of the NDPS Act, I deem it expedient to appreciate the submissions keeping in view the broad parameters on which the prayer for discharge from prosecution is required to be appreciated.

**12.** A profitable reference in this context can be made to the judgment of the Apex Court in the case of **Union of India v. Prafulla Kumar Samal & Anr.** reported in (1979) 3 SCC 4. The observations in paragraphs 8 and 10 are instructive. They reads thus:

> "8. The scope of Section 227 of the Code was considered by a recent decision of this Court in the case of **State of Bihar v. Ramesh Singh** {(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257} where Untwalia, J., speaking for the Court observed as follows:
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> > Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a stong suspicion

> which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out."

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is

difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

**13.** On the aforesaid touchstone, reverting to the facts of the case, I find it rather difficult to accept the submissions on behalf of the petitioner that there is no material in support of the case of the prosecution that the petitioner aided and abutted accused no.1 in commission of offence under NDPS Act. The bank statements on record prima facie supports the prosecution's case that large sum of money were transferred to the petitioner's account through international wire transfer and by deducting petitioner's share remaining amount was transferred to the accounts maintained by the accused no.1, Manjeet Singh Chilotra with ICICI Bank. The bank statement demonstrates that huge sum of amounts were transferred from petitioner's firm, M/s. Computer Cops to Acme Computers, Allied Computers, DM Webcom, DM Websolutions and Raj Webtech.

**14.** Mr. Mundargi tried to justify the transfer of amounts by submitting that the amounts were part of business transaction between the petitioner and respondent no.1 of computer software. However, some invoices on record appear to be bogus. The invoice dated 17th April 2012 produced by the petitioner along with the petition shows period for service provided by the petitioner to accused no.1 to be October 2015. No explanation is on record as how invoice bears date of 17th April 2012 for period of service of 2015. The said material discrepancy remains unexplained and creates doubt about the explanation provided by the petitioner that the transfer of amount from the account of petitioner's firm to the account of prime accused was for consideration of computer software supplied by the petitioner. In relation to other invoices, the quantity of softwares supplied and number of hours and the rate does not dealt with each other raising serious doubt about the defence of software service provided by the petitioner to the accused no.1.

**15.** Additionally, there are call data records to suggest that the petitioner had telephonic conversation on several other accused on multiple occasions. Even though confessional statements under section 67 and emails are not given due weightage, the banking transactions, fake invoices and call data reports are sufficient at this stage to disclose grave suspicion against the petitioner which has not been properly explained. The aforesaid material sufficiently demonstrate role of the present petitioner in aiding and abutting commission of offence alleged against the petitioner to undergo trial.

**16.** The upshot of the aforesaid consideration is that there are sufficient ground to proceed against the petitioner for the offence under section 8(c) read with 22C, 23C, 25 and 27A, 28 and 29 of the NDPS Act. The trial thus must proceed to its logical conclusion. Resultantly, the writ petition deserves to be dismissed.

**17.** The writ petition stands dismissed. Rule is discharged. No costs.

**18.** It is clarified that the observations in this judgment are confined to the consideration of prayer for discharge and the learned Special Judge shall decide the case on its own merits and in accordance with law without being influenced by any of the observations made above.

**(AMIT BORKAR, J.)**